

HERBERT NEW & DAVID W. NEW, P.C.  
300 BROADACRES DRIVE, 3<sup>RD</sup> FLOOR  
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(973) 893-9696  
Attorneys for Defendants  
Southern Container Corp. and Steven Hill

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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**John Luscko,**

**Plaintiff,**

**v.**

**Southern Container Corp., Steven Hill  
and John Does I-XX, Individually,**

**Defendants.**

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**CIVIL ACTION NO. 06-3896 (WHW)**

**REPLY DECLARATION OF BENJAMIN A.  
KARFUNKEL**

I, BENJAMIN A. KARFUNKEL, ESQ., declare and state as follows:

1. I am an attorney at law of the State of New Jersey and an associate of Herbert New & David W. New, P.C., counsel for Southern Container Corp. ("Southern") and Steven Hill ("Hill"), (Southern and Hill collectively referred to as "Defendants") in the above matter.
2. Among my responsibilities is the overseeing of the litigation instituted by John Luscko ("Luscko") against the Defendants.
3. On December 4, 2008, the deposition of Hill was taken. A copy of the relevant portions of his deposition transcript are annexed hereto as Exhibit A.
4. On November 13, 2008, the deposition of Timothy Kelly, an employee of Southern, was taken. A copy of the relevant portion of his deposition transcript are annexed hereto as Exhibit B.

5. On October 7, 2008, the deposition of Nicholas Dottino, an employee of Southern, was taken. A copy of the relevant portions of his deposition transcript are annexed hereto as Exhibit C.

6. On May 22, 2008, Plaintiff took the deposition of Abbie Hoffman, an employee of Southern and former employer of Plaintiff. A copy of the relevant portions of her deposition transcript are annexed hereto as Exhibit D.

7. On May 1, 2008 the deposition of John Luscko was taken. A copy of the relevant portions of his deposition transcript are annexed hereto as Exhibit E.

8. During discovery, Defendants produced copies of Customers Complaints generated by Southern Container Corp., redacted copies, bearing Bates Numbers 308-311 and 318-319, identifying Lai Gorman as the Complaint Coordinator, are annexed hereto as Exhibit F.

I declare under penalty of perjury that the foregoing is true and correct.

HERBERT NEW & DAVID W. NEW, P.C.  
Attorneys for Defendants

By:   
BENJAMIN A. KARFUNKEL

Dated: September 25, 2009

# EXHIBIT A

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1 than what you have already told me.

2 A I recall that there was an offer made.  
3 I recall that he turned down an offer because of the  
4 terms I think of the commission arrangement.

5 Q How did you find out that information?

6 A I was the Executive Vice President of  
7 the company. We have periodic meetings with the  
8 Senior Vice President in charge of all of our box  
9 plant operations.

10 A gentleman Nick Dottino, who you have  
11 interviewed -- deposed. During one of our -- at  
12 least one of our meetings Nick would have made me  
13 and Steven Grossman aware that they were trying to  
14 recruit a high-powered salesman.

15 Q Looking, again, at 298 to 299, the  
16 terms of that have to be approved by you?

17 A No.

18 Q So Mr. Dottino had authority to make  
19 that offer?

20 A No. He would have to go to Mr.  
21 Grossman.

22 Q So Mr. Grossman authorized that?

23 MR. KARFUNKEL: Objection.

24 Q 298?

25 A I can't say. You asked me what the

1 compensation terms were not negotiable?

2 A We had agreed, prior to presenting the  
3 contract to the basic commission arrangement. So  
4 that was not negotiable.

5 Q You say "we agreed." You had agreed  
6 with Regal?

7 A I agreed with Regal.

8 Q Did you have any further discussions in  
9 person with Mr. Luscko at any time?

10 A The next time I met Mr. Luscko in  
11 person after that meeting was the time I met with  
12 you and he in Manhattan.

13 Q Before this lawsuit?

14 A Yes.

15 Q That was after he had been separated  
16 from Southern's employment, correct?

17 A Right.

18 Q Did you have any discussions about or  
19 concerning Mr. Luscko with anyone else at Southern  
20 Container between the time the employment contract  
21 was signed and the time Mr. Luscko left Southern  
22 Container?

23 A The only conversation I had was when  
24 Nick Dottino at one of our frequent, because they  
25 weren't on a formal schedule, meetings told me that

1           A           No. Mr. Luscko, in his papers some  
2 place says that he left me numerous messages and  
3 didn't get a call back. That is not my style. Any  
4 time I get a message, I return it maybe the next  
5 day. We have a voice mail system. I check my voice  
6 mail religiously.

7                       So I don't understand where he was  
8 coming from with those comments, but it is  
9 incongruous with the way I conduct myself.

10          Q          You also get paper telephone messages?

11          A          Sometimes.

12          Q          Did you get paper telephone messages at  
13 the time in 2005 or 2006?

14          A          That is a general question.

15          Q          I'm trying to find out if you got paper  
16 telephone messages from Mr. Luscko outside of voice  
17 mail?

18          A          No.

19          Q          You're positive of that?

20                       MR. KARFUNKEL: Objection.

21          A          Only a fool is positive. What I  
22 explained to you is the way I conduct myself in the  
23 business world and I pride myself in being prompt  
24 and attentive. So unless a message fell off my desk  
25 and I never saw it -- if I had a message, I would

1 have returned the call.

2 Q You have no recollection of any written  
3 or voice mail message from Mr. Luscko in that  
4 period?

5 MR. KARFUNKEL: Objection.

6 A No.

7 Q Did you have a secretary or an  
8 assistant during that period?

9 A Yes.

10 Q Who was that?

11 A I'm smiling because we've gone through  
12 about three different secretaries during that period  
13 of time. At the moment I have none. So I don't  
14 know who the person was at that point in time.

15 Q Did your secretary or assistant have  
16 instructions from you to not take calls from certain  
17 people?

18 A No. I will tell you this.

19 Occasionally, I would get a message  
20 from somebody and I would ask my secretary to call  
21 back and say "Find out what it is about" to make  
22 sure it should be coming to me.

23 Q But, in any case, you would know who  
24 the caller was?

25 A Yes. Unless it was what they perceived



1 Q Yes.

2 A No. Bear in mind I at that time did  
3 not have any operational responsibility.

4 Q At any conversation that you had with  
5 anyone at Southern between the beginning of 2005 and  
6 April of 2006 did the topic of Mr. Luscko's age ever  
7 come up?

8 A No.

9 Q Did you ever ask Mr. Luscko about his  
10 income?

11 A No.

12 Q Did he ever furnish you with his tax  
13 return?

14 A I think, as part of this process, he  
15 furnished his tax returns to somebody. I haven't  
16 seen them.

17 Q But not to you?

18 A No.

19 Q The topic of Mr. Luscko's income for  
20 prior years before the Regal sale was not a subject  
21 of a direct discussion between Mr. Luscko and  
22 yourself?

23 A No.

24 Q Did you ever ask Mr. Luscko if he felt  
25 he was getting too old to be in the box business?

1 A No. That is really silly. He's a  
2 couple of years older than me. I didn't think I was  
3 too old to be in the box business.

4 Q But you had different positions, right?  
5 He was selling?

6 A So was I. When I went to Procter &  
7 Gamble they were proud to have my gray hair in their  
8 presence.

9 Q Procter & Gamble?

10 A The company's largest account.

11 Q Oh, I see.

12 A That was by example when you said he  
13 was a salesman and I wasn't.

14 Q Do you know a person named Victor  
15 Veston?

16 A Who?

17 Q Victor Veston, V-e-s-t-o-n?

18 A No.

19 Q A moment ago you told me you had no  
20 operational responsibility.

21 A At that time.

22 Q We're talking about the time frame of  
23 2005-2006.

24 A Yes.

25 Q So you would not have had any

1 MR. HARTMANN: What was the objection  
2 for?

3 MR. KARFUNKEL: You keep using the  
4 term" resign." I don't think you established a  
5 time?

6 A I did say "resign." I was required to  
7 resign as an officer and Director. Not an employee.

8 Q Whatever your testimony was, we'll be  
9 governed by that. I don't want to put words in your  
10 mouth. I appreciate your explanation. I think we  
11 settled that. That is not going to be an issue.

12 Q Were you ever made aware of any  
13 problems regarding the transfer of tooling or  
14 customer property in the transition between Regal  
15 and Southern?

16 A Yes.

17 Q What were you told?

18 A In generality, I was told that the  
19 Regal tooling was a nightmare; that it wasn't  
20 properly maintained; it wasn't properly stored; it  
21 wasn't properly organized.

22 Q Who told you that?

23 A Nick Dottino.

24 Q But Regal serviced its customers before  
25 the sale with that tooling, right?

1           A           There is a lot to be said in a positive  
2           and negative way from a little company that works  
3           with familiarity, doesn't have production standards  
4           and works without documentation because they've done  
5           it before. That, in my estimation, is how Regal  
6           functioned with the tooling they had and the  
7           documentation they had. The intense lack of  
8           efficiency that that plant functioned under.

9           Q           So this inhibited Southern's ability to  
10          gear up to sell to those customers?

11          A           In the short term, yes.

12          Q           How do you define "the short term"?

13          A           After Southern would have an  
14          opportunity to run an item the first time, they  
15          would be in a position to, A, correct any  
16          deficiencies with tooling or purchase new tooling,  
17          B, create the proper documentation to be able to  
18          manufacture the item and, C, in some cases where it  
19          wasn't manufactured or wasn't shipped correctly, the  
20          customer complaints that filled the room would  
21          enable Southern Container to correct its records so  
22          the next time it wouldn't be done like that.

23          Q           How long would this process of  
24          adjustment take?

25          A           It depends on the frequency of

# EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL NO. 06-3896 (WHW)

JOHN LUSCKO,

Plaintiff,

v.

SOUTHERN CONTAINER  
CORP., STEVEN HILL and  
JOHN DOES 1-XX,  
Individually,

Defendants.

DEPOSITION UPON  
ORAL EXAMINATION  
OF  
TIMOTHY J. KELLY

COPY

T R A N S C R I P T of the stenographic  
notes of HOWARD A. RAPPAPORT, a Certified Shorthand  
Reporter of the State of New Jersey, Certificate No.  
XI00416, taken at the offices of HERBERT NEW &  
DAVID W. NEW, P.C., 300 Broadacres Drive, Bloomfield,  
New Jersey, on Thursday, November 13, 2008,  
commencing at 10:20 a.m.

<p>38</p> <p>1 issue that we addressed with John.</p> <p>2 Q Was there any way to override the credit</p> <p>3 hold?</p> <p>4 A Only if you knew why they weren't paying</p> <p>5 it. If it was a reasonable, you know, if there was</p> <p>6 knowledge of a problem and it was a reasonable</p> <p>7 position for the account to take, we would override</p> <p>8 it, but we would need that information to do that.</p> <p>9 Q What would you have to do to override</p> <p>10 it?</p> <p>11 A You would have to call up the credit</p> <p>12 and, you know, state your case. It would be</p> <p>13 something you would have to tell them that they are</p> <p>14 not paying it because they were short shipped, or</p> <p>15 they were not paying it because they had a quality</p> <p>16 issue and they are going to return the boxes.</p> <p>17 Q You say call up the credit, that would</p> <p>18 be the credit department in corporate?</p> <p>19 A Yes.</p> <p>20 Q Who would have the authority to do that?</p> <p>21 A The GM would need to work with credit to</p> <p>22 take them off of credit hold.</p> <p>23 Q Now, Mr. Luscko worked out of Dayton</p> <p>24 first?</p> <p>25 A Initially, yes.</p>	<p>40</p> <p>1 he came in.</p> <p>2 Q Was there another general manager that</p> <p>3 you remember at Deer Park between July of 2005 and</p> <p>4 April of 2006?</p> <p>5 A I do not.</p> <p>6 Q Could anyone other than the general</p> <p>7 manager work with credit to take an account on credit</p> <p>8 hold?</p> <p>9 A No.</p> <p>10 Q Could the general manager change the</p> <p>11 customer's credit limits or terms?</p> <p>12 A They could be influential, but did not</p> <p>13 have the final word, credit. The credit department</p> <p>14 at Southern Container was a fairly strong group.</p> <p>15 Q And that's at headquarters?</p> <p>16 A Um-hum.</p> <p>17 Q That's in Hauppauge?</p> <p>18 A Correct.</p> <p>19 Q You mentioned them being a strong group.</p> <p>20 Do you know who was in the group from July of 2005 to</p> <p>21 April of 2006?</p> <p>22 A I don't remember all the people. I</p> <p>23 think Betty Klaiber headed the department at that</p> <p>24 time.</p> <p>25 Q Do you recall anyone else in the</p>
<p>39</p> <p>1 Q And then in Deer Park?</p> <p>2 A Right.</p> <p>3 Q Who was the GM at Dayton.</p> <p>4 A Paul Frank.</p> <p>5 Q And Deer Park?</p> <p>6 A I believe it was Joe Andrews. He was</p> <p>7 right around that time frame.</p> <p>8 Q Mr. Luscko left in April 2006?</p> <p>9 A Correct.</p> <p>10 Q Was Mr. Frank still the general manager</p> <p>11 of Dayton in April of 2006?</p> <p>12 A No.</p> <p>13 Q Who was?</p> <p>14 A I don't know if we had a GM at that</p> <p>15 time.</p> <p>16 Q When did Mr. Frank separate?</p> <p>17 A It was in the first quarter of '06.</p> <p>18 Q Was Mr. Andrews the general manager at</p> <p>19 Deer Park during Mr. Luscko's tenure at Southern?</p> <p>20 A Yeah. I don't remember the exact dates,</p> <p>21 but for at least a portion of it.</p> <p>22 Q So was there someone else while</p> <p>23 Mr. Luscko was still employed?</p> <p>24 A No, Joe Andrews was transferred in from</p> <p>25 Syracuse. So I don't remember the exact dates that</p>	<p>41</p> <p>1 department?</p> <p>2 A Pat Majoski -- I'm sorry -- yeah, Pat</p> <p>3 Majoski.</p> <p>4 Q Do you recall anyone else?</p> <p>5 A I don't.</p> <p>6 Q Turning again to page three, I'm looking</p> <p>7 at items four, five and six. Do you have any</p> <p>8 information relating to those categories?</p> <p>9 A No, nothing other than what's in the</p> <p>10 packet here.</p> <p>11 Q And item seven requests information</p> <p>12 relating to Mr. Luscko's responsibility as a Southern</p> <p>13 employee.</p> <p>14 Do you see that?</p> <p>15 MR. KARFUNKEL: Objection.</p> <p>16 A Yes.</p> <p>17 Q You told me about the documents and the</p> <p>18 meetings. Was a job description prepared for</p> <p>19 Mr. Luscko?</p> <p>20 A I'm not sure if there was one in the</p> <p>21 agreement, in the employment agreement.</p> <p>22 Q Let me rephrase the question then.</p> <p>23 Other than in the employment agreement,</p> <p>24 was there a written job description for Mr. Luscko?</p> <p>25 A No.</p>

11 (Pages 38 to 41)

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1 an eight percent increase for the account and we gave  
2 it to him.

3 Q Do you recall any others?

4 A They are listed here in this e-mail.

5 Acron/Norca, A-c-r-o-n slash N-o-r-c-a.

6 Q Any others?

7 A No, they are the ones that I have here.

8 Q And the reason that Mr. Luscko gave for  
9 either not wanting to pass along a price increase or  
10 having a lower than market price increase was exactly  
11 what?

12 A John didn't give any answer that I'm  
13 aware of that would have been acceptable.

14 Q There are two parts to your answer. He  
15 didn't give a response or he didn't give an  
16 acceptable response?

17 A He didn't give an acceptable response.

18 Q What response did he give?

19 A I don't recall, but I'm telling you that  
20 there would not have been an acceptable response.

21 Q Have you told me all the accounts where  
22 Mr. Luscko struggled with the price increases?

23 A Yeah, they were the accounts that I was  
24 involved with.

25 Q You also mentioned earlier that there

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1 was feedback or communication from the customers,  
2 that that had to go through you?

3 A It should have gone through me. That  
4 doesn't necessarily mean that it did.

5 Q And you are saying it didn't?

6 A There were accounts that John expressed  
7 issues with and there were accounts that everyone at  
8 that time expressed issues with. It was an avalanche  
9 of complaints throughout our business during that  
10 period.

11 Q Other than the customer service  
12 representatives who included Linda Birch and other  
13 than yourself, who else on board at Southern could  
14 have worked toward resolving these issues?

15 A Paul Frank could have been instrumental.

16 Q Have you spoken to Mr. Frank about  
17 whether Mr. Luscko communicated customer concerns to  
18 him?

19 A I don't recall.

20 Q Who else other than Mr. Frank?

21 A John may have talked to anybody in  
22 customer service. It's hard to know at this point.

23 Q Outside of customer service, outside of  
24 yourself and outside of Mr. Frank, was there anyone  
25 else?

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1 were issues with Mr. Luscko's account execution.  
2 What did you mean by that?

3 A Just the basic responsibilities of sales  
4 and taking care of the accounts.

5 Q Specifically, what do you mean by taking  
6 care of the accounts?

7 A Primarily communicating issues from the  
8 accounts, communicating why the account wouldn't pay  
9 its bills, communicating our price increase  
10 requirements to the accounts.

11 Q Was there anything else?

12 A No. The real key issues that we had in  
13 that short tenure that John was with us was trying to  
14 service the accounts as we went through the  
15 transition.

16 The communication issues were big. We  
17 needed to know what the requirements of the accounts  
18 were in order to service them properly, and we  
19 weren't getting that information.

20 Q Do you know if Mr. Luscko communicated  
21 with others at Southern regarding the negative  
22 feedback from the customers?

23 MR. KARFUNKEL: Objection.

24 A No.

25 Q Is it your understanding that if there

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1 A Probably very unlikely, unless he was  
2 just complaining about something to somebody who  
3 didn't have impact.

4 Q Take a look again, please, at P-7.

5 A I got it here.

6 Q Item nine discusses sales and support  
7 staff. We talked about customer service and yourself  
8 and Mr. Frank.

9 Were there any other persons to whom  
10 Mr. Luscko could have turned for sales support?

11 A No. We would have been the primary  
12 positions that would support sales.

13 Q Were you familiar at all with any new  
14 business that Mr. Luscko attempted to develop? By  
15 new business, I'm talking about customers who had not  
16 been customers at Regal.

17 A Yes.

18 Q What were those?

19 A Some of the documents -- there was a  
20 list that you had provided. Do you recall where that  
21 is? No.

22 Q Just take your time. If there is  
23 something that you saw that is an image in your mind,  
24 take whatever time you need to find it.

25 A Here it is, page 15.

16 (Pages 58 to 61)



<p>62</p> <p>1 MR. HARTMANN: We should probably mark</p> <p>2 this. We haven't marked this yet.</p> <p>3 Let's mark this as Plaintiff's 11,</p> <p>4 plaintiff's document production.</p> <p>5 (Exhibit marked for identification P-11,</p> <p>6 Plaintiff's document production, Bates numbers 1</p> <p>7 through 172.)</p> <p>8 MR. KARFUNKEL: I have 189.</p> <p>9 MR. HARTMANN: Let's use 189 then. I</p> <p>10 think I'm working off a wrong number.</p> <p>11 Yeah, you're right, it's 189. It is</p> <p>12 189.</p> <p>13 Q You were at page 15?</p> <p>14 A 15, right.</p> <p>15 Q Okay.</p> <p>16 A What I can tell you is Quickie</p> <p>17 Manufacturing was a prospect that John was working on</p> <p>18 that would have run in the Mooresville,</p> <p>19 M-o-o-r-e-s-v-i-l-l-e, facility, but from what I</p> <p>20 understand it, it just didn't go anywhere based on</p> <p>21 pricing and, you know, what the requirements of the</p> <p>22 account were.</p> <p>23 Q Okay.</p> <p>24 A I'm not familiar with Gray Metals.</p> <p>25 Alcan, A-l-c-a-n, Pak, P-a-k, I do know</p>	<p>64</p> <p>1 Mr. Luscko was sent to you or was it sent directly to</p> <p>2 Mr. Luscko?</p> <p>3 A No, it was sent to the plant. It was</p> <p>4 sent to the GM's attention.</p> <p>5 Typically it would have been given to me</p> <p>6 to distribute.</p> <p>7 Q Mr. Luscko contends in this case that he</p> <p>8 did not receive his commission statements in a timely</p> <p>9 fashion. Is that correct or is that not true?</p> <p>10 A That's not true.</p> <p>11 Q Why is it not true?</p> <p>12 A The commission statements are attached</p> <p>13 to the commission checks and they are distributed at</p> <p>14 the same time.</p> <p>15 Q So you didn't hold Mr. Luscko's</p> <p>16 statements back?</p> <p>17 A Everyone gets their commission</p> <p>18 statements with their checks.</p> <p>19 Q Look at item 13, the complaints are what</p> <p>20 are in the documents.</p> <p>21 A Yeah, the ones that we went through.</p> <p>22 Q Are you familiar with any verbal</p> <p>23 complaints by customers?</p> <p>24 A Not outside of the complaints that we</p> <p>25 said.</p>
<p>63</p> <p>1 that was a bid that we reviewed, but we did not feel</p> <p>2 that we matched up we will with. It was a kind of a</p> <p>3 cats and dogs mix of business that at the time, quite</p> <p>4 frankly, we were struggling to get all of our orders</p> <p>5 out the door with all of our accounts.</p> <p>6 Our focus was on the existing customer</p> <p>7 base.</p> <p>8 Q Any others?</p> <p>9 A No.</p> <p>10 Q Did you ever personally do a written</p> <p>11 evaluation of Mr. Luscko's job performance?</p> <p>12 A I did not.</p> <p>13 Q Was that something done ordinarily for</p> <p>14 salesmen?</p> <p>15 A No.</p> <p>16 Q Is it done now?</p> <p>17 A No, unless there is a specific issue</p> <p>18 that needs to be addressed. But it's not done now.</p> <p>19 Q Do you see item 12 in the notice? Still</p> <p>20 on page three.</p> <p>21 A Yes.</p> <p>22 Q How frequently were commission</p> <p>23 statements issued by Southern?</p> <p>24 A Monthly.</p> <p>25 Q And the commission statement for</p>	<p>65</p> <p>1 Q Look over to page four of P-7. I'm up</p> <p>2 to item 14.</p> <p>3 A Okay.</p> <p>4 Q Another one of the plaintiff's</p> <p>5 contentions in this case is that deliveries were made</p> <p>6 by Southern in an untimely way.</p> <p>7 On time delivery reports came up in the</p> <p>8 deposition of Mr. Dottino. Have those been produced?</p> <p>9 A They have.</p> <p>10 Q What numbers are they, or how would you</p> <p>11 refer to them by what has been produced?</p> <p>12 A This is P-10?</p> <p>13 Q P-10. What is in P-10?</p> <p>14 A P-10 is a consolidated report by plant</p> <p>15 by year for on time delivery. Actually, by plant by</p> <p>16 year and by month.</p> <p>17 Q And for what years and months?</p> <p>18 A 2004, one through 13 -- well, actually I</p> <p>19 say month, but Southern was on a period system, so</p> <p>20 there would be 13 periods rather than 12 months, each</p> <p>21 period being four weeks.</p> <p>22 I should specify, you asked me before</p> <p>23 about the commission checks. They came out once per</p> <p>24 period.</p> <p>25 Q Okay, fair enough.</p>

17 (Pages 62 to 65)

<p>66</p> <p>1 A 13 periods a year.</p> <p>2 2005, periods one through 13, for some</p> <p>3 reason period 11 is missing.</p> <p>4 2006, period one through 13 and 2007 one</p> <p>5 through 13.</p> <p>6 Q How was that generated?</p> <p>7 A I had asked our corporate quality</p> <p>8 director if he had a record of the on time delivery</p> <p>9 by plants, and this is what he provided to me.</p> <p>10 Q The consolidated report would be for all</p> <p>11 deliveries, all customers?</p> <p>12 A Right. It is shown as a percentage,</p> <p>13 percentage of on time.</p> <p>14 Q So on P-10 it is a single sheet number</p> <p>15 577?</p> <p>16 A Yes.</p> <p>17 Q And who is the custodian of the data</p> <p>18 that's on that page?</p> <p>19 A The data is consolidated by the</p> <p>20 corporate quality manager.</p> <p>21 Q Who is that?</p> <p>22 A It used to be Ron Byers, right now I</p> <p>23 believe it's Jim Eastman, E-a-s-t-m-a-n.</p> <p>24 Q That information would not help you to</p> <p>25 determine how deliveries were made by customers,</p>	<p>68</p> <p>1 simultaneous notice of the delivery date if it's</p> <p>2 different from what the customer requests?</p> <p>3 A Yes.</p> <p>4 Q How is that accomplished?</p> <p>5 A Either through a phone call or a fax</p> <p>6 back. Typically if the PO is faxed in the customer</p> <p>7 service rep will then go to the computer, and there</p> <p>8 is a scheduling program that they will look for</p> <p>9 available machine time, and then when they get their</p> <p>10 date from that software they will put it on the</p> <p>11 document and fax it back or call them back if it's a</p> <p>12 verbal order.</p> <p>13 Q So the salesman is not involved in that?</p> <p>14 A They might be. They may be the ones who</p> <p>15 faxed the order over or called in the order.</p> <p>16 Q So if a change occurs, then the salesman</p> <p>17 gets the information in the phone call or the</p> <p>18 customer?</p> <p>19 A If the salesman called in the order, it</p> <p>20 is likely the call is going to go back to the sales</p> <p>21 rep.</p> <p>22 Q Go down the page to item 15.</p> <p>23 Do you recall whether there were any</p> <p>24 issues raised about returned or rejected goods</p> <p>25 involving Mr. Luscko's customers?</p>
<p>67</p> <p>1 would it?</p> <p>2 A No. Actually, it's a production matrix</p> <p>3 that is used to identify problems, not tied to an</p> <p>4 account. It is tied to, you know, you may have two</p> <p>5 missed deliveries based on shipping, or three missed</p> <p>6 deliveries tied to design or custom service.</p> <p>7 It is used as a tool to improve your</p> <p>8 operations.</p> <p>9 Q Are any records maintained of on time</p> <p>10 delivery by customer?</p> <p>11 A Not that I'm aware of.</p> <p>12 Q What are the criteria for determining</p> <p>13 whether a delivery is on time?</p> <p>14 A The criteria is when we receive an order</p> <p>15 from a customer, we will either accept their order</p> <p>16 date or not accept it.</p> <p>17 Once we accept or establish a delivery</p> <p>18 date, then if it does not make that delivery date,</p> <p>19 then it's considered late, not on time.</p> <p>20 Q Can a delivery date change during</p> <p>21 production?</p> <p>22 A No. Once it's set, it's set.</p> <p>23 Q It is set in advance of production?</p> <p>24 A It's set in advance of production.</p> <p>25 Q And does the customer receive</p>	<p>69</p> <p>1 A Yeah, there were.</p> <p>2 Q What do you recall?</p> <p>3 A Well, those are fairly well documented</p> <p>4 in here.</p> <p>5 Q Just refer to the document by number.</p> <p>6 A In P-8.</p> <p>7 Q Okay.</p> <p>8 You have had a chance to look at P-8,</p> <p>9 right, Mr. Kelly?</p> <p>10 A I have.</p> <p>11 Q Are there any incidents of returned or</p> <p>12 rejected goods that you can recall that are not</p> <p>13 contained in P-8?</p> <p>14 A Not that I recall.</p> <p>15 Q What was Southern's return policy</p> <p>16 between July of 2005 and April of 2006?</p> <p>17 MR. KARFUNKEL: Objection.</p> <p>18 A I don't understand.</p> <p>19 Q Was there a policy that Southern</p> <p>20 specifically had for allowing customers to return or</p> <p>21 reject product?</p> <p>22 A Yes. If a customer rejected product,</p> <p>23 they were to notify the sales rep or the customer</p> <p>24 service rep and tell them why they were rejecting it.</p> <p>25 Then the product would be shipped back</p>

18 (Pages 66 to 69)

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1 for Mr. Luscko's e-mail or fax number. Do you see  
2 that?  
3 A I do.  
4 Q And you responded, "Victor: John's  
5 e-mail is copied on this message so that you can be  
6 sure you will now be flooded with porn."  
7 Do you see that?  
8 A I see that.  
9 Q You wrote that?  
10 A I did write that.  
11 Q You don't have this e-mail anymore?  
12 A I don't believe so. This is from years  
13 ago.  
14 Q Why did you write that Mr. Veston could  
15 be sure that his e-mail would be flooded with porn?  
16 A It was a joke. Victor had been a long  
17 time customer of ours. John knew him for a long  
18 time. We knew him for a long time. It was just a  
19 joke. Probably not, you know, looking back, I wish I  
20 didn't write it, but it was supposed to be funny, and  
21 Victor laughed at it and it was a joke.  
22 Q Did Mr. Luscko bring this up with you?  
23 A He did.  
24 Q What did he say?  
25 A He was upset, didn't want me to send an

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1 e-mail like that out on his behalf.  
2 Q Did he say why?  
3 A I don't remember if he said why or not.  
4 Q Did he tell you that the e-mail was also  
5 his wife's e-mail?  
6 A You know what, he may have told me at  
7 the time.  
8 Q Was that incident pretty much raised and  
9 dropped or did that carry over?  
10 A No, as far as I know that was it.  
11 Q And at that time, February 2, 2006, were  
12 you the sales manager of Dayton or were you already  
13 the regional sales manager?  
14 A I think I was still the sales manager.  
15 Q Can you tell me when you were promoted?  
16 A Yeah, the promotion took place during  
17 the acquisition of Schiffenhaus.  
18 Q When was that?  
19 A I don't remember the exact dates. It  
20 was the first quarter of 2006.  
21 Q Do you still have P-7?  
22 A Yes.  
23 Q Take a look at 22. I'm going to go back  
24 now to the process of placing orders and revising  
25 orders.

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1 If an order was placed by a customer and  
2 then changed because of the machine timing that you  
3 described, how would the salesman find that out?  
4 Would he have to find that out from the customer or  
5 did he get a copy of the new delivery date?  
6 A No, he would normally communicate that,  
7 or that would be communicated to him by customer  
8 service.  
9 Q How?  
10 A Through phone.  
11 Q Phone call?  
12 A Typically a phone call.  
13 Q Did Mr. Luscko ever raise with you the  
14 matter of whether he was able to get through to  
15 people at customer service?  
16 A I'm sure he did. It was difficult to  
17 get through to a lot of people at that time. John  
18 would not have been alone on that.  
19 Q Does Southern keep a business record of  
20 any kind, sales orders generated by customer?  
21 A By specific order?  
22 Q Yes.  
23 A I don't believe so.  
24 Q Is there a diary or a journal of any  
25 kind kept of orders received with delivery dates and

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1 then changed delivery dates?  
2 A No, not to my knowledge.  
3 Q If you had to satisfy yourself one way  
4 or the other, how would you go about doing that? Who  
5 would you talk to and how would you find out?  
6 A If you wanted to find out how many  
7 orders were missed for a specific account?  
8 Q No. My last question is whether a  
9 record was kept as either as a journal entry or a  
10 diary entry of an order received by customer and  
11 whether the delivery dates or any other items in the  
12 ordered to be changed. Is that entered anywhere  
13 would be the question?  
14 A No.  
15 Q And are the purchase orders retained or  
16 are they discarded once an invoice is generated?  
17 A They are kept for about six months.  
18 Q Why six months?  
19 A We run probably 70 orders a day per  
20 plant. So by the time you get to six months you've  
21 got, you know, as far as paper, you know, which is  
22 tons of paperwork.  
23 Q Did anyone other than Ms. Birch ever  
24 complain about Mr. Luscko to your knowledge?  
25 MR. KARFUNKEL: Referring to fellow

23 (Pages 86 to 89)

# EXHIBIT C

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO: 06-3896 (WHW)

JOHN LUSCKO,

Plaintiff,

vs

SOUTHERN CONTAINER CORP.,  
STEVEN HILL and JOHN DOES I-XX,  
Individually,

Defendants.

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DEPOSITION UPON  
ORAL EXAMINATION  
OF  
NICHOLAS DOTTINO

COPY

TRANSCRIPT of the stenographic notes of  
ANDREA NOCKS, a Certified Court Reporter and  
Certified Realtime Court Reporter of the State of  
New Jersey, Certificate No. XI01573, taken at the  
offices of HERBERT NEW & DAVID W. NEW, P.C.,  
300 Broadacres Drive, Third Floor, Bloomfield,  
New Jersey, on Tuesday, October 7, 2008,  
commencing at 10:20 a.m.

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1 salesperson. We require the salesperson to  
 2 capture the data, assure its accuracy, assure the  
 3 timeliness of the data is appropriate to satisfy  
 4 the complaint but we don't, quote, burden them  
 5 with sitting and typing, filling out the form --  
 6 Q That's not what I'm asking you.  
 7 A Oh.  
 8 Q I'm asking you where it says in the  
 9 box status of complaint.  
 10 A Yes.  
 11 Q It says created 1/9/2006 by Naomi  
 12 Mangroo. Do you see that?  
 13 A Yes.  
 14 Q Are you able to tell from the status  
 15 box or any other part of the document whether the  
 16 salesman received a copy of the complaint?  
 17 A No.  
 18 Q Is it normal for the document not to  
 19 show the transmittal to the salesman?  
 20 A 100 percent.  
 21 Q So --  
 22 A Yes.  
 23 Q Just make sure I understand, there  
 24 are 11 entries for the administrative status of  
 25 this complaint, ten or eleven entries. Do you see

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1 that? All the way down to August 22nd of 2006.  
 2 Do you see that?  
 3 A Yes.  
 4 Q So all those entries are being made  
 5 but no entries being made to reflect the salesman  
 6 is aware of the comments in the root cause box or  
 7 the corrective action box?  
 8 A Correct.  
 9 Q And is this document edited each  
 10 time after its creation or once it's created it is  
 11 not edited?  
 12 A It is edited typically in the  
 13 investigation process which would trigger a change  
 14 in root cause and corrective action.  
 15 Q So as of today, we don't know who  
 16 typed what in root cause or corrective action?  
 17 A Correct.  
 18 Q So the reliability of this document  
 19 is dependent upon all the persons in the status  
 20 box, correct?  
 21 MR. KARFUNKEL: Objection.  
 22 You can answer, if you understand  
 23 the question.  
 24 Do you understand the question?  
 25 A I don't understand the question.

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1 Q To the extent you're relying on the  
 2 text in the root cause box and the corrective  
 3 action box means you're relying upon the persons  
 4 in the field stated status of complaint to make  
 5 entries or edit accurately, correct?  
 6 A In addition to the people that would  
 7 also report to them.  
 8 Q There's no other business record  
 9 other than this that would record the customer  
 10 complaint. Is that true?  
 11 A That is true.  
 12 Q Can this document be edited today?  
 13 A No.  
 14 Q When is the document closed?  
 15 A If you refer to the bottom of page  
 16 313, the tenth entry in that dialogue box you were  
 17 referring to.  
 18 Q Yes.  
 19 A Is when that's listed as closed, I  
 20 believe that becomes a viewable only template in  
 21 our system. I believe. I'm not a hundred percent  
 22 sure. It's my knowledge of it.  
 23 Q All right. But in this case, before  
 24 August 22nd of 2006 the document could have been  
 25 edited?

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1 A Yes.  
 2 Q And who had access to this document  
 3 between the date of its creation and the date it's  
 4 closed?  
 5 MR. KARFUNKEL: Is that for editing  
 6 purposes or just reviewing --  
 7 MR. HARTMANN: Yes. For editing  
 8 purposes.  
 9 A Certainly the folks listed in that  
 10 dialogue box.  
 11 Q Would there be access by department?  
 12 A Yes.  
 13 I also wasn't done.  
 14 Q I'm sorry. Go ahead.  
 15 A The folks listed in that dialogue box  
 16 and many of their direct reports, specifically in  
 17 customer service and sales and depending on the  
 18 nature of the complaint, also a manufacturing  
 19 supervisor.  
 20 Q The document itself doesn't tell you  
 21 who may have edited it, does it?  
 22 If someone wanted to not show up in  
 23 the box as someone who edited it, would they have  
 24 the capacity to do that?  
 25 A I would not know how. No.

13 (Pages 46 to 49)

<p>114</p> <p>1 service representative?</p> <p>2 MR. KARFUNKEL: Objection to that.</p> <p>3 BY MR. HARTMANN:</p> <p>4 Q Do you understand that question?</p> <p>5 A Below as it relates to --</p> <p>6 Q Customer service.</p> <p>7 A I understand. In comparison below as</p> <p>8 it relates to income or --</p> <p>9 Q Rank.</p> <p>10 A -- responsibility?</p> <p>11 Q Both.</p> <p>12 A I would not consider customer service</p> <p>13 to be entry level.</p> <p>14 Q Would a customer service</p> <p>15 representative typically have anyone reporting to</p> <p>16 them?</p> <p>17 A Rarely.</p> <p>18 Q Is Joe Mulholland still with the</p> <p>19 company?</p> <p>20 A Yes.</p> <p>21 Q Is Dan Harbaugh still with the</p> <p>22 company?</p> <p>23 A Yes.</p> <p>24 Q Can you estimate how many customer</p> <p>25 service representatives were employed by Southern</p>	<p>116</p> <p>1 MR. HARTMANN: I'll lay a further</p> <p>2 foundation because we have an objection.</p> <p>3 BY MR. HARTMANN:</p> <p>4 Q Is she still employed by Southern?</p> <p>5 A No.</p> <p>6 Q Do you know why?</p> <p>7 A I can only speculate.</p> <p>8 Q Was any reason given for her</p> <p>9 separation that you're aware of?</p> <p>10 A My understanding is we have a, quote,</p> <p>11 short-term employment agreement with her. The</p> <p>12 rationale for the employment agreement was she did</p> <p>13 not initially want to transition from Regal to</p> <p>14 Dayton, as I understand it, principally due to</p> <p>15 geographic distance. It became clear to us that</p> <p>16 we would want and need additional knowledge and</p> <p>17 support during the transition. We then returned</p> <p>18 to Linda with an offering for, quote, a short-term</p> <p>19 employment agreement. I forget the exact</p> <p>20 structure of it, but it, in essence, detailed if</p> <p>21 you stay for X period of time, you'll receive a</p> <p>22 bonus, one third of it to be paid here, one third</p> <p>23 here and one third at the conclusion or some</p> <p>24 variation of that. And when that employment</p> <p>25 agreement ended, I believe she left shortly</p>
<p>115</p> <p>1 Container between July of 2005 and April of 2006?</p> <p>2 A For the entire company?</p> <p>3 Q Well, for the plants where</p> <p>4 Mr. Luscko reported, Dayton and then Deer Park.</p> <p>5 A I would be guessing.</p> <p>6 Q Can you estimate?</p> <p>7 A Yes.</p> <p>8 Q What would be your estimate?</p> <p>9 A Deer Park, six to seven. Dayton,</p> <p>10 five to six. Lancaster, probably seven, maybe</p> <p>11 eight. Murphysboro, I believe I saw some sales</p> <p>12 from, likely four.</p> <p>13 Q Who is Linda Birch?</p> <p>14 A Linda was a customer service</p> <p>15 representative employed by Regal who we employed</p> <p>16 for a short period of time physically located in</p> <p>17 Dayton.</p> <p>18 Q And she worked with Mr. Luscko at</p> <p>19 Regal?</p> <p>20 A Yes.</p> <p>21 Q Would that be fair?</p> <p>22 A Yes.</p> <p>23 Q Do you know why she left Southern</p> <p>24 Container?</p> <p>25 MR. KARFUNKEL: Objection.</p>	<p>117</p> <p>1 thereafter which, frankly, was not a surprise to</p> <p>2 anyone. Our intent was create that employment</p> <p>3 agreement in which enabled us to make the</p> <p>4 transition. We also compensated her some</p> <p>5 additional monies for gas or transportation, so.</p> <p>6 Did I answer your question?</p> <p>7 Q Yes.</p> <p>8 Are you familiar with Mr. Luscko's</p> <p>9 agreement with Southern Container in terms of</p> <p>10 compensation?</p> <p>11 A I'm familiar with his employment</p> <p>12 agreement.</p> <p>13 Q Okay. And he was to be paid five</p> <p>14 percent commission on sales to former Regal</p> <p>15 customers. Would that be correct?</p> <p>16 A I believe that's what it states.</p> <p>17 Yes.</p> <p>18 Q Were there any other salesmen at</p> <p>19 Southern who were paid on a five percent</p> <p>20 commission basis?</p> <p>21 A Yes.</p> <p>22 Q Who?</p> <p>23 A Off the top of my head I don't know,</p> <p>24 but there are several salespeople that make that</p> <p>25 and more. A flat five, I wouldn't be able to pick</p>

30 (Pages 114 to 117)



<p>122</p> <p>1 delivery date?")</p> <p>2 A Yes.</p> <p>3 Q How would that happen?</p> <p>4 A It's an order entry system and if a</p> <p>5 customer calls to request a date change, that</p> <p>6 change can be applied within the system. If</p> <p>7 there's something else that would require a date</p> <p>8 change, that change can manually be made also.</p> <p>9 Maybe I am misunderstanding the question.</p> <p>10 Q I think I asked you a bad question.</p> <p>11 A Okay.</p> <p>12 Q If the customer requested a certain</p> <p>13 delivery date and the order was placed on a</p> <p>14 certain delivery date, would the plant have the</p> <p>15 ability to alter that delivery date?</p> <p>16 A Sure.</p> <p>17 Q And would the customer be notified</p> <p>18 of that?</p> <p>19 A They should. Yes.</p> <p>20 Q Should?</p> <p>21 A Um-hum.</p> <p>22 Q Would the salesman be notified of</p> <p>23 that?</p> <p>24 A Most often, yes. Whether it be date</p> <p>25 moving up or date moving back, yes.</p>	<p>124</p> <p>1 Q And she's retired?</p> <p>2 A Correct.</p> <p>3 Q Was she out of Long Island?</p> <p>4 A Yep. Yes.</p> <p>5 Q Who's in that position now?</p> <p>6 A Sheila Sedgwick.</p> <p>7 Q S-e-d-g --</p> <p>8 A W-i-c-k.</p> <p>9 Q Also in Long Island?</p> <p>10 A Correct.</p> <p>11 Q Was Miss Sedgwick employed in the</p> <p>12 credit department in the second half of 2005?</p> <p>13 A I don't know. Sheila joined us as</p> <p>14 Betty was announcing her retirement and leaving,</p> <p>15 so their overlap was fairly minor.</p> <p>16 Q How many people, if you know, were</p> <p>17 in the credit department in the second half of</p> <p>18 2005?</p> <p>19 A I'd only be guessing.</p> <p>20 Q Are there people in the credit</p> <p>21 department today who were in the credit department</p> <p>22 in 2005?</p> <p>23 A No.</p> <p>24 Q Do you know the process or</p> <p>25 methodology by which the Regal personnel who</p>
<p>123</p> <p>1 Q Do you have any knowledge of how</p> <p>2 credit terms for Regal customers were determined</p> <p>3 once those customers were transitioned to</p> <p>4 Southern?</p> <p>5 MR. KARFUNKEL: Objection.</p> <p>6 A Only minor.</p> <p>7 Q What knowledge do you have?</p> <p>8 A We agreed initially to take their</p> <p>9 portfolio of customers, transition them into</p> <p>10 Southern, using the existing terms until we were</p> <p>11 able to run complete D and Bs on them, gain</p> <p>12 payment history, et cetera. That's the extent of</p> <p>13 my knowledge.</p> <p>14 Q Who determined the monthly credit</p> <p>15 limits for particular customers, ultimately?</p> <p>16 A Credit manager.</p> <p>17 Q Who's the credit manager?</p> <p>18 A At the time I believe it was Betty</p> <p>19 Klaiber.</p> <p>20 Q This would be the second half of</p> <p>21 2005 and the first half of 2006?</p> <p>22 A She retired. I can't recall exactly</p> <p>23 when she retired, but --</p> <p>24 Q Betty Klaiber, K-l-a-b-e-r?</p> <p>25 A A-i-b-e-r.</p>	<p>125</p> <p>1 joined Southern were informed of changes to credit</p> <p>2 terms of the former Regal customers?</p> <p>3 A In part, yes.</p> <p>4 Q What was that?</p> <p>5 A Typically credit manager would call</p> <p>6 general manager who would review a sales manager</p> <p>7 and then some combination of those three would</p> <p>8 communicate with the salesperson.</p> <p>9 Q Did the particular manager at</p> <p>10 Dayton, in this case, Mr. Kelly, have input into</p> <p>11 determining the credit terms for Regal customers</p> <p>12 serviced by Mr. Luscko that transitioned to</p> <p>13 Southern?</p> <p>14 A Very minor, if at all.</p> <p>15 Q To whom did Miss Klaiber report?</p> <p>16 A Todd Blatterman. Todd was our chief</p> <p>17 financial officer.</p> <p>18 Q Todd?</p> <p>19 A Blatterman, B as in boy,</p> <p>20 l-a-t-t-e-r-m-a-n.</p> <p>21 Q And who did Mr. Blatterman report</p> <p>22 to? We're still in 2005 and 2006.</p> <p>23 A Yeah.</p> <p>24 MR. KARFUNKEL: If anyone.</p> <p>25 A I'm sorry.</p>

32 (Pages 122 to 125)



<p style="text-align: right;">166</p> <p>1 accounts and this comes from the signed Luscko 2 employment agreement. 3 Q We're just on the transition period 4 now, right? 5 A That wasn't your question. 6 Q No. No. You said in your answer 7 before the last answer that the transition was 8 stressed and that you only wished it was true that 9 during the transition period Southern neither 10 missed a delivery nor had a quality problem. 11 A Correct. 12 Q And then my next question was in 13 light of your answer that the transition period 14 was stressed, which of Mr. Luscko's customers that 15 he serviced experienced a delivery or quality 16 problem during the transition period? 17 A I don't know that that's what you 18 said, but I'll answer it that way. 19 Q We went over chapter and verse of 20 problems in the customer complaint evaluations, 21 right? I don't want you to tell me about that 22 again. 23 A I believe there were Taurus problems, 24 Office Basics Novelty Cohen, I don't know how to 25 pronounce it, Helvoet Pharma, H-e-l-v-o-e-t, and</p>	<p style="text-align: right;">168</p> <p>1 when they come in, but no one is, quote, given an 2 office or a phone. 3 Q Do you know how he was informed of 4 that procedure? 5 A Specifically, no. I could assume 6 that when we showed everyone through the 7 building -- 8 Q Can't assume, though. 9 A Okay. 10 Q You wouldn't know? 11 A When we showed everyone through the 12 building, everyone was shown the customer service 13 area, the reception area, the payroll area, the 14 sales area. So did John understand the sales area 15 was where the salespeople should have worked, I 16 would only be assuming. 17 Q Okay. 18 A I was never taken around to meet any 19 of the employees in the plant or the office, I do 20 not believe that was true. 21 Same page, third paragraph, John 22 goes on for several sentences describing how he 23 was not getting paid, corporate didn't have 24 records of his pay scale. We attempted to change 25 the draw, not receiving commission checks, being</p>
<p style="text-align: right;">167</p> <p>1 I'm not clear on the others. 2 Q Were these delivery problems or 3 quality problems? 4 A I'm not clear, although at that time 5 period there were both. 6 Q What records would you look at to 7 pin down what the specific problems were, if any? 8 A That becomes a little bit more 9 complicated. Regal was still operating their 10 business in their building under their roof with 11 their systems, for lack of a better term. So we 12 were not recording a lot of those transactions as 13 if we had complete control over the transaction. 14 So it's pretty spotty those first 60 days. I 15 don't know what I would look at. I don't believe 16 Regal maintained much, if any of that. 17 Okay to keep going? 18 Q Yep. 19 A Top of page seven, first paragraph, 20 John states I was not given an office or a phone. 21 No salesperson is. We don't have assigned 22 offices. We don't have assigned cubicles. We 23 have a general sales area, sales bullpen, if you 24 will, where salespeople are given a group of 25 cubicles and a group of phones that they can use</p>	<p style="text-align: right;">169</p> <p>1 short on payments. I think there were -- I know 2 there were initial problems transitioning all of 3 the Regal people in as quickly as we did. And 4 there were initial errors. A, I don't think -- I 5 know they were not limited to John. B, I don't 6 believe that there was an increased or higher 7 frequency with John as compared to anyone else 8 during that time period. I also don't believe 9 that they would have stretched beyond those first 10 two months and he's suggesting that they did. I 11 would be surprised if that were factual. 12 I'm not arguing that there were 13 problems, but I'd be surprised if that were 14 factual. 15 Same page, fifth paragraph down, 16 John says Southern does not give any salesperson a 17 copy of invoices so it is impossible for the 18 salesperson to check his income. And "ba", "ba", 19 "ba". It goes on further. Sorry. No "ba", "ba", 20 "ba". It goes on further with some other comments 21 related to that. That's simply not true. Not 22 only do salespeople get daily summaries, they get 23 weekly summaries, they get monthly summaries and 24 then they get a monthly tally with commission 25 checks and that's every salesperson. It would</p>

43 (Pages 166 to 169)

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1 have nothing to do with simply the Regal  
2 transition.  
3 Same page, next paragraph down,  
4 which is the sixth paragraph, in early January  
5 Paul Frank called me at home to tell me that  
6 Steven Grossman, Southern's owner, had personally  
7 reviewed my commission for '05 and had determined  
8 that I was overpaid by \$16,500. That is, in fact,  
9 true. We had doubled his draw for a series of  
10 months. How that initial error happened, we  
11 simply don't know. It was in payroll in  
12 Hauppauge. No one caught it. John never offered  
13 up that information. Steven being the type of  
14 auditor that he is uncovered it. We informed John  
15 of it. And we came to a plan that John could  
16 repay it over the period of, I think five or six  
17 months. I do not believe that his comments  
18 regarding give me a check today, et cetera, are  
19 factual.

20 Page eight, second paragraph now,  
21 second paragraph down, John describes the sales  
22 opportunity in North Carolina. He was given  
23 prices by the owner of a company. John offered to  
24 save him money, i.e., cut prices by five percent.  
25 Our plant in North Carolina was not interested in

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1 the opportunity. One month later the industry  
2 lowered the cost of liner board by six percent.  
3 John's comment which I don't agree with is I  
4 believe that Southern knew this cost reduction was  
5 coming and I lost the sales. I can't see any  
6 logic from a business standpoint on why we would  
7 not pursue sales because of a possible impending  
8 price increase or decrease.

9 In referring back to his employment  
10 agreement, we have the ability to view individual  
11 opportunities and whether cost was going up or  
12 going down, to me I'm not sure how that ties in,  
13 in any way, shape or form. So I don't agree with  
14 that statement.

15 Same page, page eight, first  
16 sentence, Southern refused to provide quality and  
17 service on all of my accounts. Categorically, 100  
18 percent completely disagree. We -- I don't know  
19 what we as a company could have done more to  
20 service John's accounts or any other Regal  
21 accounts during that period. We had our  
22 facilities and our people working consistently six  
23 and seven days, people putting in 12 to 16 hours  
24 in a fashion that, quite honestly, brought our  
25 business almost to our knees and when I say our

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1 business, our long-term accounts, our long-term  
2 salespeople were suffering tremendously. We were  
3 on the verge of losing not only Regal business and  
4 Regal employees but people that had been with us  
5 for ten and 15 and 20 years and longer. Customers  
6 who were unquestionably loyal to us were  
7 revolting. It was easily the most chaotic period  
8 I've ever seen in my career. And to assume that  
9 we just categorically said we're not going to  
10 provide quality or service to anyone's accounts, I  
11 find ludicrous. And I don't use that term  
12 lightly. We had done everything possible. And  
13 the reality of it is coming out of a remarkably  
14 difficult transition, the worst I had ever seen,  
15 everyone is still employed with us today minus  
16 John, and particularly, the Regal folks are more  
17 successful today than they were then.

18 And even though many folks wanted to  
19 quit, Southern people, Regal people, managers,  
20 hourly workers, I think we're stronger today and  
21 we're more successful today from having worked  
22 through it. Minus John.

23 Last sentence in that paragraph,  
24 Southern would not process -- John said Southern  
25 would not process my orders and support my ability

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1 to sell this long-standing and reliable customer.  
2 I can't understand from what John describes here  
3 why that would make any sense. To not process  
4 orders and to not support further business growth  
5 is simply reducing our own results and our own  
6 benefits. With a customer who, quite frankly, we  
7 found to be very attractive and who John states  
8 correctly on this page, and I think on the  
9 previous page, for years we had tried to retain  
10 that customer. I don't see his logic. He hasn't  
11 articulated logic here that I can understand, so I  
12 don't agree with that.

13 Page nine --

14 Q I'm going to interrupt you there,  
15 because I should have gotten that conference call  
16 from Judge Dumont by now.

17 (Discussion held off the record.)

18 (Brief recess.)

19 A Top of page nine, first paragraph,  
20 John says Paris business missed over 60 percent of  
21 deliveries, Custom Building missed 75 percent,  
22 Cesar's Pasta in three months never got a delivery  
23 on-time. I would question the accuracy of all  
24 three of those comments.

25 Q And you would use the on-time

44 (Pages 170 to 173)

# EXHIBIT D

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Civil Action No. 06-3896 (WHW)

JOHN LUSCKO,

Plaintiff,

ORAL DEPOSITION OF

-V-

ABBIE F. HOFFMAN

SOUTHERN CONTAINER CORP.,  
STEVEN HILL and JOHN DOES  
I-XX, Individually,

Defendants.

COPY

\* \* \* \* \*

Thursday, May 22, 2008

\* \* \* \* \*

TRANSCRIPT of proceedings in the above  
matter taken at the law office of Fox Rothschild, 997  
Lenox Drive, Lawrenceville, NJ, commencing at 10:25  
a.m.

1 Porter, Wayne Marchant, Jeff Chalovich, maybe Paul  
 2 Frank. It was in his office. I don't remember.  
 3 Q. So none of the former Regal salespeople  
 4 were included in that meeting?  
 5 A. No, it was Southern's management. No  
 6 one from Regal became Southern management, including  
 7 myself.  
 8 Q. On page 15 of Mr. Luscko's employment  
 9 agreement there is a list of customers, and I think  
 10 the title there says continuing accounts, do you see  
 11 that?  
 12 A. Yes, I do.  
 13 Q. I want to ask you which of the customers  
 14 on that list fit within the category of customers  
 15 that Southern at some point determined it was no  
 16 longer interested in retaining.  
 17 A. I don't believe any of these were a part  
 18 of that group.  
 19 Q. So as of at least some point in 2005,  
 20 Southern was still interested in keeping those  
 21 accounts?  
 22 A. That was my understanding.  
 23 Q. Can you identify any of the accounts  
 24 that fall into the category of the determination by  
 25 Southern that it was not interested?

1 run.  
 2 Q. How about Cambridge?  
 3 A. Cambridge they didn't like the  
 4 quantities, and they didn't buy a certain piece of  
 5 equipment that they had said they were going to  
 6 purchase when we first entered into an agreement.  
 7 Q. And Kramco?  
 8 A. Didn't fit in their mix.  
 9 Q. And you said a minute ago that you would  
 10 have to see a list. Would you keep a list, do you  
 11 have a list in your office?  
 12 A. Yes.  
 13 Q. Were these your accounts?  
 14 A. Two of them were. One was not. One was  
 15 Bruce Brown's.  
 16 Q. So the list that you have are they  
 17 everyone's accounts or just your accounts?  
 18 A. I have everyone's accounts.  
 19 Q. Has anyone asked you to produce that  
 20 list --  
 21 A. No.  
 22 Q. -- to attorneys?  
 23 A. No. I think I pretty much know on the  
 24 whole customer base that went to Southern why -- I  
 25 think I know why the customers are no longer -- which

1 A. Excuse me.  
 2 Q. You say, maybe I am confused, but you  
 3 said a minute ago that the continuing accounts on the  
 4 document in front of you Southern wanted to keep  
 5 essentially?  
 6 A. As I am aware of.  
 7 Q. Can you identify specific accounts that  
 8 Southern determined, based on your testimony during  
 9 the last few minutes, that it was no longer  
 10 interested in?  
 11 A. No. I don't believe any of these  
 12 accounts fall under that category --  
 13 Q. Okay.  
 14 A. -- in that meeting that day.  
 15 Q. So it's my understanding it's none of  
 16 those accounts, but you can identify specific  
 17 accounts that Southern decided to let go?  
 18 A. I can.  
 19 Q. Okay. What are those?  
 20 A. South Fork Metal, Cambridge-Lee, Kramco.  
 21 There is more. I just -- I have to look at the list.  
 22 Q. What was the reason for South Fork  
 23 Metal?  
 24 A. They didn't like the quantities, and  
 25 they had to run on a machine that they didn't want to

1 customers are no longer with Southern.  
 2 Q. And why is that?  
 3 A. Some were because the delivery was bad  
 4 and some were because they didn't want them.  
 5 MR. HARTMANN: We have to mark a couple  
 6 of things, so this might be a time to take a couple  
 7 minutes, rather than have you sit.  
 8 (Exhibit No. P-2, Answers and  
 9 Objections to John Luscko's First Notice to Produce  
 10 Documents to Southern Container Corp. and Steven  
 11 Hill, was marked for identification.)  
 12 (Exhibit No. P-3; Answers and  
 13 Objections to John Luscko's First Set of  
 14 Interrogatories to Southern Container Corp. and  
 15 Steven Hill, was marked for identification.)  
 16 (Recess.)  
 17 BY MR. HARTMANN:  
 18 Q. I placed in front of you, Miss Hoffman,  
 19 P-2 and P-3. P-2 consists of the Defendant's Answers  
 20 and Objections to Mr. Luscko's Notice to Produce  
 21 Documents, and P-3 consists of Answers and Objections  
 22 by Defendants to Mr. Luscko's First Set of Written  
 23 Interrogatories. Just take a minute to look at those  
 24 and take as much time as you need, and just let me  
 25 know when you've had a chance to look at those.

10 (Pages 34 to 37)

1 A. I wanted to know why I didn't know, what  
2 was going on with the rest of John's accounts, and I  
3 believe I might have called John after I found out,  
4 too, cause I was very upset.  
5 Q. You were upset because you didn't want  
6 Mr. Luscko to leave or why were you upset?  
7 A. I was upset that John was in such a  
8 position that he felt that he had to, and I was very  
9 unhappy with Southern because of it.  
10 Q. Did you speak to anyone else about that  
11 other than Mr. Kelly?  
12 A. I don't think so. I might have sent an  
13 e-mail to Nick Dottino. I might have.  
14 Q. Did anyone else call you?  
15 A. Uh-huh.  
16 Q. You have to verbalize.  
17 A. No.  
18 Q. Do you know if Southern took any  
19 statements from any people regarding Mr. Luscko's  
20 departure?  
21 A. I do not know.  
22 Q. Have you seen anything other than Mr.  
23 Kelly's e-mail in writing that discusses Mr. Luscko's  
24 departure?  
25 A. I don't believe so. Southern really

1 A. Not really.  
2 Q. A minute ago you said you know how  
3 John's accounts were handled. What do you know about  
4 how John's accounts were handled? Feel free to refer  
5 to the list in the back of D-2, which was the  
6 employment agreement.  
7 A. At some point in time it was decided  
8 that John was going to be based -- what happened --  
9 excuse me. They moved some of John's accounts,  
10 T-Fal, Cobra, Helvoet, Taurus up to -- and there is  
11 probably more, but up to the Deer Park and Hauppauge  
12 facility because they felt they could be better  
13 handled out of those two plants. This customer  
14 service person at Deer Park, Lai Gorman, was the  
15 absolute worse thing that could have hit those four  
16 accounts in particular. Southern couldn't make  
17 delivery on the accounts. They couldn't get the  
18 orders processed on the accounts. They couldn't find  
19 tooling on those accounts. It was a nightmare.  
20 Q. What else happened with John's accounts  
21 other than that?  
22 A. All the accounts that were being run in  
23 the Dayton Plant were getting late deliveries, were  
24 being processed when they wanted to process them. If  
25 an order came over, and it still happens today, if an

1 didn't say very much about it.  
2 Q. At any time after April of 2006 have you  
3 spoken to Mr. Hill about Mr. Luscko in any  
4 connection?  
5 A. I had one meeting with Mr. Hill, I  
6 believe it was after that. John was not discussed.  
7 Q. Did you have any other discussions with  
8 anyone in Southern's management about Mr. Luscko at  
9 any time after Mr. Luscko left Southern?  
10 A. I'm sure I did.  
11 Q. Do you recall who that would have been?  
12 A. I probably had a conversation with Mike  
13 Petee from the Deer Park Plant, and I've had  
14 conversation on and off with Mr. Kelly.  
15 Q. What did you talk about with Mr. Petee?  
16 A. How badly John's accounts were handled.  
17 Q. Do you recall what you said?  
18 A. I don't recall what I said.  
19 Q. Did you ask him about how John's  
20 accounts were handled?  
21 A. I know how John's accounts were handled.  
22 I didn't have to ask that question, but he said to me  
23 that it was a shame what happened with John's  
24 accounts, that they really dropped the ball.  
25 Q. Anything else?

1 order comes in from a customer and the purchase order  
2 says date due 6/10 and Southern goes to enter it in  
3 their computer and the computer comes back to them  
4 and says delivery will be 6/12, they just put an X  
5 through the date and change the date and fax it back  
6 or e-mail it back to the customer. Salesman never  
7 knows a thing about it.  
8 Q. What else?  
9 A. I think I said pretty much of it.  
10 Q. Okay. If you think of anything else  
11 just say I remember something else.  
12 A. Okay. I remember something else. The  
13 communication was just horrendous, just horrendous.  
14 Customers didn't get proper information. Salespeople  
15 didn't get proper information. The salesman from  
16 Regal were kept well informed of everything, all  
17 their accounts. They knew what orders were placed.  
18 They knew when stuff was shipping. If something was  
19 going to ship late the customer -- the salesman was  
20 called and then it was up to the salesperson, if the  
21 salesman was going to handle it or the customer  
22 service person was going to handle it. There is no  
23 communication with Southern. Their receiver will  
24 just pick up the phone and tell the customer it's  
25 going to be late, and the salesman would find out

12 (Pages 42 to 45)

# EXHIBIT E



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY  
CIVIL ACTION NO. 06-3896(WHW)

-----X  
JOHN LUSCKO, )  
Plaintiff, ) DEPOSITION UPON  
v. ) ORAL EXAMINATION  
SOUTHERN CONTAINER CORP., ) OF  
STEVEN HILL, et als., ) JOHN LUSCKO  
Defendants. )  
-----X

T R A N S C R I P T of the stenographic  
notes of the proceedings in the above-entitled  
matter as taken by and before Moe Sussman, a  
Certified Shorthand Reporter and Notary Public  
of the State of New Jersey, at the offices of  
Wacks & Hartmann, 55 Madison Avenue, Morristown,  
New Jersey, on Thursday, May 1, 2008, commencing  
at 9:55 o'clock in the forenoon.

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I N D E X T O E X H I B I T S

NO.	DESCRIPTION	PAGE
D-1	Complaint	16
D-2	Employment Agreement	79
D-3	Asset Purchase Agreement	120
D-4	Multipage Document - first page headed Deer Park Sales Reps	121
D-5	Salesperson Compensation Summary for period 1/27/06 to 7/14/06	125
D-6	Multipage document - first page headed John Luscko Customer List	134
D-7	Salesperson Compensation Summary for period 8/5/05 to 10/28/05	152
D-8	Plaintiffs' Answers to Defen- dants' First Set of Interroga- tories	173
D-9	Sales Comparison Report	188
D-10	Batch of Invoices	191
D-11	Multipage letters addressed to: To Whom It May Concern	193

1 JOHN LUSCKO, having been duly sworn  
2 according to law by the Officer, testifies as  
3 follows:  
4  
5 DIRECT EXAMINATION  
6 BY MR. KARFUNKEL:  
7 Q. Good morning, Mr. Luscko. My name  
8 is Benjamin Karfunkel. I represent the  
9 defendants Southern Container and Steven Hill.  
10 Do you know for what reason you're  
11 here today?  
12 A. Yes.  
13 Q. This is a deposition that I  
14 noticed through your attorney for you to appear  
15 here and the purpose of the deposition is for me  
16 to ask questions and for you to provide answers  
17 based on the complaint that you filed against  
18 the defendants.  
19 Do you understand that?  
20 A. Yes, I do.  
21 Q. Have you ever been deposed before?  
22 A. I'm not sure. Maybe once before.  
23 Q. Do you recall when that was?  
24 A. I do not remember.  
25 Q. I want to give you sort of an



41

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1 assistance of a designer....and that's something  
 2 I did on a regular basis.  
 3 I was always redesigning and working with  
 4 the designer on samples and et cetera to present  
 5 to customers.  
 6 Q. When you say designer, you design  
 7 different types of boxes?  
 8 A. Yes. That's a very essential point of my  
 9 sales. I'm always going into a customer and  
 10 showing them how to improve his operation and to  
 11 do that, you then design boxes, or redesign  
 12 boxes, and that's what I did.  
 13 Q. Did the Deer Park facility have  
 14 the same type of technology allowing you to  
 15 design and use a lab?  
 16 A. With one exception: took forever to get  
 17 there. Deer Park is in Long Island, New York.  
 18 From Medford, New Jersey, it was probably three  
 19 hours one way.  
 20 To go to Deer Park once or twice a month  
 21 just inhibited my sales ability. I didn't want  
 22 to spend all day at the George Washington  
 23 Bridge.  
 24 Q. What other facilities does  
 25 Southern have besides Deer Park?

1 A. They have ten locations.  
 2 Q. Are they all within the northeast  
 3 area?  
 4 A. One in Tennessee, one in North Carolina;  
 5 that's three. Lancaster is four; Dayton is  
 6 five. They have one in New York. They have a  
 7 few up in the northeastern area. I don't  
 8 remember where they are.  
 9 But they have ten plants in the eastern  
 10 part of the United States.  
 11 Q. Did there come a time when the  
 12 salespersons who were stationed out of the other  
 13 facilities would come and use the facilities,  
 14 say, in this area as opposed to the one in  
 15 Tennessee or North Carolina?  
 16 A. I don't know.  
 17 Q. Other than performing design work  
 18 and utilizing the lab, and what you mentioned  
 19 beforehand trying to get information on  
 20 processes or orders, any other reasons to  
 21 physically be at the Dayton plant?  
 22 A. Yes.  
 23 Q. What are those?  
 24 A. Normal format is....a new item, new box,  
 25 you bring a sample, you bring specs and you

43

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1 review with the proper people so it's done  
 2 correctly. And that means hands-on operation.  
 3 That became very difficult for me to do  
 4 in Deer Park.  
 5 Q. Because of the long commute?  
 6 A. Yes. I would leave sometimes 6:30 in the  
 7 morning and get home 11 o'clock at night.  
 8 That's a long day. And I didn't function well  
 9 the next day.  
 10 Q. Did you ever make a request to  
 11 transfer back to the Dayton facility?  
 12 A. No. I never made a request to go to the  
 13 Deer Park facility either. I don't know why I  
 14 was assigned to that facility. Nobody else did  
 15 either.  
 16 Q. So Abbie Hoffman told you --  
 17 A. Abbie Hoffman was told to tell me the  
 18 first six months of Regal becoming part of  
 19 Southern that the Regal salespeople, of which  
 20 there were four, were to report to Abbie so the  
 21 process -- so she could integrate us into the  
 22 system.  
 23 Q. Abbie told you. Who told her that  
 24 you were being transferred?  
 25 A. I don't know.

1 Q. Ever complain to anyone about the  
 2 fact that you were transferred from Dayton to  
 3 Deer Park?  
 4 A. No.  
 5 Q. Why not?  
 6 A. I don't complain. I'm an employee.  
 7 Q. Ever complain about not receiving  
 8 your commissions?  
 9 A. Yes.  
 10 Q. Even though you were an employee?  
 11 A. Yes.  
 12 Q. Anything else you complained about  
 13 other than not receiving the proper commission?  
 14 A. Quality, service and lack of information.  
 15 There are certain things an employee can  
 16 request...like income. That, to me, is  
 17 important. That's why I'm working.  
 18 I worked for Southern I think for seven  
 19 weeks before I received a paycheck. I  
 20 constantly called, including Mr. Hill, and never  
 21 got an answer from anybody why I was not being  
 22 paid. Ask my wife.  
 23 MR. KARFUNKEL: I'm not going  
 24 there.  
 25 THE WITNESS: Okay.

45

46

(At this point there is a recess).

AFTER RECESS

BY MR. KARFUNKEL:

Q. You mentioned you complained about not receiving commissions for about seven weeks.

Do you know of any other salesperson who had the same problem?

A. I don't know.

Q. How many other salespersons were employed by Southern in July of 2005?

A. I don't know.

Q. Do you know of anyone else?

A. Yes. There were five or six, but I didn't know them.

Q. You had no contact with other salespeople?

A. Occasionally you would run into somebody in the office. And once every two or three months we would have a sales meeting. Some would show, some wouldn't.

I knew the three salesmen from Regal who were salesmen for Southern.

Q. What are the names of the other

people who were a carryover from the Regal era?

The salespeople.

A. Skip McNeal, Bruce Brown, Bob Zajac.... and Abbie Hoffman became a salesperson for Southern.

Q. You mentioned there were sales meetings about every two or three months. Am I correct?

A. Yes.

Q. Where were they held?

A. Usually at a restaurant in town. I believe it was called La Pierre.

Q. Which town?

A. In Dayton. In the Dayton area.

We would have a luncheon and a sales meeting to discuss certain topics.

Q. And you attended those luncheons?

A. Yes. They were required and I do what's required.

Q. Did you discuss any new technology or any improvements that could be made with regards to making sales?

A. No.

Q. What was discussed at these luncheons?

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A. Usually delivery problems, quality problems and pricing problems.

Q. The people you mentioned beforehand -- Bob Zajac, Abbie Hoffman, Bruce Brown -- did they attend those luncheons?

A. Yes.

Q. Anyone else other than the people you mentioned beforehand attend the luncheons?

A. Yes.

Q. Do you remember their names?

A. No. Southern had maybe three other salesmen who I met. Don't know who they are, don't know their names, never socialized with them except to see them at the meetings.

Q. Who was moderating or leading these meetings?

A. Tim Kelly.

Q. Anyone else besides salespersons and Tim Kelly at these luncheons?

A. Paul Frank, who was a GM, may have come. I'm not sure. I don't remember.

Q. Did you voice any complaints at these luncheons....

A. No.

Q. ....about deliveries, quality or

pricing?

A. If this was a topic of discussion, yes. But I wasn't there to complain. I was there to listen as to what was going on at the sales meeting. It wasn't a complaint session.

Maybe I misunderstood.

Q. What topics were discussed at these luncheons?

A. Normally volume. We needed more volume or we had too much volume.

Pricing. Prices were going up. We had a due date as to when we were expected to get the increase.

That's basically I think what the meetings were for.

Q. Volume....what does that mean?

A. Production. We needed more production or we had too much production. There were production issues all the time at Southern.

Q. How many meetings did you attend during your tenure at Southern?

A. Maybe three, maybe four.

Q. That would be the time frame between July 2005 and April of 2006?

A. No.

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130

1 dollars. I was told Mr. Grossman wanted a check  
2 that day.

3 I told them I didn't have 16 thousand 500  
4 dollars. They told me they would take the  
5 advance, which was 3 thousand dollars every  
6 other week and deduct it until the 16 thousand  
7 5 hundred dollars was paid.

8 And that's what they did. They charged  
9 me for it but never got it. It went to Mr.  
10 Grossman.

11 Q. You were paid in advance  
12 3 thousand for which months?

13 A. I was paid at Regal 2 thousand dollars a  
14 week as a draw. I was supposed to be paid  
15 2 thousand dollars a week as a draw and Mr. Hill  
16 said I would.

17 But what happened was, I got nothing for  
18 about seven weeks, no pay, no commissions,  
19 nothing.

20 They finally said we'll give you  
21 15 hundred dollars a week draw, not two  
22 thousand. We're not going to give you two  
23 thousand. So they changed the rules again and  
24 decided to give me 15 hundred dollars a week  
25 draw.

1 But they pay every other week. So they  
2 were going to give me 3 thousand dollars every  
3 other week for a four-week period, which came  
4 out to 6 thousand dollars.

5 What they did was, they gave me two  
6 checks a month of 3 thousand dollars each for a  
7 draw. When the commission summary was done, I  
8 had gotten 6 thousand dollars a month. They  
9 only deducted 3 thousand dollars because I never  
10 got a commission summary. I did not know this.

11 Apparently I was told that Mr. Grossman  
12 was checking my commissions in January and came  
13 up with they overpaid me by 16 thousand  
14 5 hundred dollars.

15 I was told to report to the office the  
16 next morning with Tim Kelly and Paul Frank, who  
17 had this, and I said I never seen this.

18 So they substantiated that I was being  
19 paid 6 thousand dollars and only deducted four,  
20 so I owed them 16 thousand 500. I agreed.

21 They said instead of paying you a draw,  
22 from now on we'll take the draw and give it to  
23 Mr. Grossman until the 16 thousand 500 was paid.

24 If you will look at what my commissions  
25 came out to -- and that's prior to taxes --

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1 8 thousand dollars after taxes. I was starving.

2 It has it here. (Reviews document).

3 I'm sorry. My commission was 8 thousand  
4 55 dollars and I got 2 thousand 55 dollars for  
5 the month.

6 Q. So you received an advance of  
7 3 thousand dollars for what period of time?

8 A. September, October, November, December I  
9 got 3 thousand dollars every two weeks, which  
10 came out to 6 thousand dollars a period.

11 Southern worked on 13 four-week periods.  
12 Instead of getting 3 thousand dollars advance in  
13 January, February, March and April, they took  
14 that money and gave it to Mr. Grossman because  
15 they had overpaid me.

16 I did not make that decision. They said  
17 they're going to take that and give it to Mr.  
18 Grossman because we overpaid you.

19 Q. Looking at column number 3 for  
20 March of '06, it shows net sales of 155 thousand  
21 dollars.

22 A. Yes.

23 Q. Then the following month in April  
24 of '06 it shows sales of 59 thousand dollars.

25 A. Yes.

1 Q. And you received your commissions  
2 based on those sales for those months?

3 A. Less deductions.

4 Q. Okay, less deductions. But you  
5 received the commissions less deductions.

6 A. If you see Special Deductions, they took  
7 away 75 hundred dollars and commissions earned  
8 was 29 hundred. So I was in arrears of 45  
9 hundred 41 dollars. I was owing them money.  
10 That's why I resigned.

11 Q. In March of '06 --

12 A. No. I thought you said April.

13 Q. It's a new question.

14 In March of '06 it shows  
15 commissions earned of 73 hundred less special  
16 deductions of 3 thousand dollars, amount paid of  
17 43 hundred dollars.

18 Did you receive that 43 hundred  
19 dollars in March of '06?

20 A. I would think so.

21 Q. Do you know why they gave you  
22 special deductions of 75 hundred dollars in  
23 April of '06 whereas in the previous month they  
24 were only deducting 3 thousand dollars?

25 MR. HARTMANN: You're asking him

1 and not by making telephone calls.

2 Did there ever come a point that  
3 you had to use e-mail accounts to communicate  
4 with customers?

5 A. I had an office in my house after August  
6 -- which is very modern. I have computers, I  
7 have everything in there. And I don't...

8 My wife does my office work. She does  
9 all my e-mails. She receives and sends. I  
10 don't do them. But I do have an e-mail.

11 Q. Did Southern provide you with an  
12 e-mail address?

13 A. No, I had my own.

14 Q. In the course of your training or  
15 every-day use, what programs are you competent  
16 in with regards to computer usage?

17 A. None. My wife does my office work for  
18 me. She receives all VoiceMails, she receives  
19 all faxes and she returns everything.

20 Q. So if someone at Southern wanted  
21 to contact you, would they do it through e-mail  
22 sometimes?

23 A. If they contacted me through e-mail, I  
24 would get it when I came home at night. I  
25 didn't travel with a computer during the day.

1 D-5?

2 A. I don't know what it is, but you showed  
3 me...(reviews document)...yes.

4 Q. If you can pull out D-5 again?  
5 I'm referring back to page 18.

6 A. Yes. If you look at those, that's  
7 year-to-date. If you add those numbers up, they  
8 came out to 28,026. This is 29,000. That's  
9 January, February, March and April.

10 Q. You already answered my question,  
11 so we'll go on to the next one.

12 Underneath the commission line it  
13 has h-o-l off...on the Earnings portion.

14 A. I don't know...

15 Q. Do you see it?

16 A. I see it. I don't know what it means.

17 Q. Did you have any holiday pay while  
18 working at Southern?

19 A. No.

20 Q. Next line has r-e-g h-r-s, so  
21 that means hours. Do you know what that refers  
22 to?

23 A. Yes. They determined that a workweek was  
24 40 hours -- because I believe to get credit for  
25 a year you needed a thousand hours.

1 So, they could e-mail me during the day,  
2 they could fax me during the day. They would  
3 send it to the house.

4 When I got home, I would respond to it.  
5 My wife would do it.

6 If it was a program, I would buy it. My  
7 wife would do it or I would be supplied with a  
8 program.

9 Q. So you would tell your wife what  
10 to write and she would --

11 A. She would type it up and do it.

12 Q. Now we'll get to page 18, which  
13 you were excited about before.

14 A. Okay.

15 Q. Can you explain to me, on the  
16 Earnings side, which is the left side of the  
17 page, it has a commission line of 28,946 of  
18 year-to-date.

19 A. Yes. Can I explain it to you?

20 Q. Please.

21 A. Sure. If you look at the other sheet we  
22 looked at, we had January, February, March and  
23 April, it comes out to 28,946 -- which the last  
24 one was 45 hundred dollars in arrears.

25 Q. You're referring back to Exhibit

1 So if you calculate 40 hours a week, you  
2 don't have to work for the company for a year.  
3 But you get credit for a year for retirement,  
4 things of that nature.

5 Most companies do it that way.  
6 Weyerhaeuser does the same thing.

7 As a salesman, you wouldn't be punching a  
8 clock and working 40 hours. You were given a  
9 40-hour workweek. If you worked 50 weeks at 40  
10 hours, it comes out to two thousand. You have  
11 to work a thousand hours to get extra  
12 compensation.

13 If I left and worked over a thousand  
14 hours, I would have gotten credit on the  
15 retirement plan for that year. So I think  
16 that's why they do it.

17 So again, if you take the hours times the  
18 weeks, it will come out to whatever the number  
19 is.

20 Q. In this period you weren't paid  
21 any additional amounts for regular hours. It  
22 seems at some point during 2006 you were paid  
23 for regular hours. Is that correct?

24 A. No. If I worked for Southern for seven  
25 months and left and I had 10 years with them of

# EXHIBIT F



**Southern Container Corp.**  
**Hauppauge Division**  
 115 Engineers Road Hauppauge, NY 11788



## Customer Complaint

Approved & Closed						
Customer Complaint #: HPG CC-4777				Date Created: 11/11/2005		
RD Number:				Priority Code: High		
RD Date:				Requested Completion Date: 11/25/2005		
RD Amount:						
Complaint Author: Lai Gorman				Complaint Type: RMA Required		
				Complaint Source:		
Customer: T-FAL CORP #8724				Customer Contact:		
Customer ID Number: 8724				eMail Address:		
Location: ONB BOLAND DR STE101, WEST ORANGE, NJ 07052 US				Salesperson ID#: RL		
Pickup Address:				Customer Tracking No.		
Job#: 102353		Manifest#: 611132		Ident: 9978807		
Invoice#: 16939		Invoice Date: 09/06/2005		Billed Pieces: 950		
Complaint Qty: 950		Price/M: [REDACTED]		Invoiced Amount: [REDACTED]		
PROBLEM DESCRIPTION: didn't order the boxes						
QUANTITY FLOW		RETURNED DISPOSITION INFORMATION			REBILL INFO	
Ordered:		Pick Up Date:	Job Lots:	0	Inv #	Inv Date
Planned		RMA:	Baled:	0		
Cut:		Additional Info:	Inventory:	0		
Converted:			Rework:	0		
Shipped:			Reship:	0		
Cust Signed:			Qty Returned:	0	Rebill Amount:	
CHARGEBACK INFO		AUTHORIZED DEDUCTION				RD Problem Code:
C/B Amount:	\$0.00	Pieces x S/M	0 X	\$0.00 =	\$0.00	RD Assignment Category:
C/B Date Issued:				Additional Credit	\$0.00	Problem Code:
C/B Date Paid:				Total Credit	\$0.00	CS11 WRONG ITEM BOOKED-CS
						Non-Salvageable Cost:
						\$0.00
<p><b>ROOT CAUSE:</b> Kelly Oddone E-Mailed SCC saying she had a new order for Item #9978807, 1000 pcs, and wanted to know the best delivery date. To get ahead of the game, the order was processed. However, T-Fal never sent in a PO, because they ultimately did not need the boxes.</p> <p><b>CORRECTIVE ACTION:</b> Customer Service will not process any orders without an express Purchase Order.</p>						
Complaint Responsibility:						
Department		Machinist		Shift		Responsible
Customer Service						

## Additional Information / Attachments:

## Customer Complaint Coordinator Section:

Routed To: Doris Jacobs	Copy To:	Quality Manager: Doris Jacobs, Doris Jacobs
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Reassigned To: Mike Petee

Status of Complaint:  
 Created -- 11/11/2005 by Lai Gorman  
 Sent to Complaint Coordinator -- 11/11/2005 by Lai Gorman  
 Rejected -- 11/14/2005 by Doris Jacobs. Rejected because: If this is a credit  
 where are the boxes?  
 Mailed for Approval -- on: 05/28/2006 by Mike Petee  
 Complaint Approved By Bill Stonebreaker -- Dated: 08/21/2006  
 Complaint Approved @ Plant Level -- 08/21/2006  
 NO CORPORATE APPROVAL REQUIRED  
 Complaint Approved & Closed -- Dated: 08/21/2006

Document Link Field:

Complaint Mailed for Approval: Date: 05/28/2006

## PLANT APPROVAL SECTION

Name: Doris Jacobs Approved - 08/10/2006 by Doris Jacobs  
 Title: Quality Manager System Authorized Backup for - Doris Jacobs

Name: Bill Stonebreaker Approved - 08/21/2006 by Bill Stonebreaker  
 Title: General Manager

**Southern Container Corp.**  
**Hauppauge Division**  
 115 Engineers Road Hauppauge, NY 11788



## Customer Complaint

Approved & Closed							
Customer Complaint #: HPG CC-4950				Data Created: 11/18/2005			
RD Number:				Priority Code: High			
RD Date:				Requested Completion Date: 12/02/2005			
RD Amount:							
Complaint Author: Melissa Campos				Complaint Type: RMA Required			
				Complaint Source: Customer			
Customer: T-FAL CORP #8724				Customer Contact:			
Customer ID Number: 8724				eMail Address:			
Location: ONE BOLAND DR STE101, WEST ORANGE, NJ 07052 US				Salesperson ID#: RL			
Pickup Address: T-fal Corp				Customer Tracking No.			
2121 Eden Road Millville, NJ							
Job#: 101989		Manifest#: 615848		Ident#: 9936601			
Invoice#: 17826		Invoice Date: 11/15/2005		Billed Pieces: 730			
Complaint Qty: 730		Price/M: [REDACTED]		Invoiced Amount: [REDACTED]			
PROBLEM DESCRIPTION: Wrong Item							
QUANTITY FLOW		RETURNED DISPOSITION INFORMATION				REBILL INFO	
Ordered:		Pick Up Date:	12/05/2005	Job Lots:	730	Inv #	Inv Date
Planned		RMA:	47798	Baled:	0		
Cut:		Additional Info:		Inventory:	0		
Converted:				Rework:	0		
Shipped:				Reship:	0		
Cust Signed:				Qty Returned:	730	Rebill Amount:	
CHARGEBACK INFO		AUTHORIZED DEDUCTION				RD Problem Code:	
C/B Amount:	\$0.00	Pieces x S/M	[REDACTED]	[REDACTED]	[REDACTED]	050 SPECIFICATIONS/DESIGN	
C/B Date Issued:				Additional Credit	\$0.00	RD Assignment Category:	
C/B Date Paid:				Total Credit	[REDACTED]	16 CUSTOMER SERVICE - NON SALV.	
						Problem Code:	
						CS11 WRONG ITEM BOOKED-CS	
						Non Salvageable Cost:	
ROOT CAUSE: we processed 9936601 vs 9933601							
CORRECTIVE ACTION: Reviewed new item procedures with all the CSR and should pay more attention to the Ident when processing order							
Complaint Responsibility:							
Department		Machine		Shift		Responsible	
CustomerService							



**Additional Information / Attachments:****Customer Complaint Coordinator Section:**

Referred To: Doris Jacobs	Copy To: Quality Manager: Doris Jacobs
---------------------------	---

Reassigned To: Lai Gorman

**Status of Complaint:**

Created - 11/18/2005 by Melissa Campos  
 Return Authorization Created - Dated: 11/18/2005  
 Sent to Complaint Coordinator - 11/18/2005 by Melissa Campos  
 Acknowledged - 11/21/2005 by Doris Jacobs  
 Reassigned - 11/21/2005 by Doris Jacobs  
 Update Sent to Complaint Coordinator - 01/05/2006 by Lai Gorman  
 Reassigned - 01/05/2006 by Doris Jacobs  
 Update Sent to Complaint Coordinator - 01/16/2006 by Lai Gorman  
 Reassigned - 01/17/2006 by Doris Jacobs  
 Update Sent to Complaint Coordinator - 01/23/2006 by Lai Gorman  
 Mailed for Approval - on: 01/24/2006 by Doris Jacobs  
 Complaint Approved By Doris Jacobs - Dated: 01/24/2006  
 Complaint Approved By Joe Andrews - Dated: 01/24/2006  
 Complaint Approved & Closed - Dated: 01/24/2006

Document Link Field:

Complaint Mailed for Approval: Date: 01/24/2006

**PLANT APPROVAL SECTION**

Name: Doris Jacobs    Approved - 01/24/2006 by Doris Jacobs  
 Title: Quality Manager



Name: Joe Andrews    Approved - 01/24/2006 by Joe Andrews  
 Title: General Manager

**Southern Container Corp.**  
**Huappauge Division**  
 115 Engineers Road Huappauge, NY 11788



## Customer Complaint

Approved & Closed					
<b>Customer Complaint #:</b> HPG CC-5663  <b>RD Number:</b> 937 <b>RD Date:</b> 11/21/05 <b>RD Amount:</b> [REDACTED]			<b>Date Created:</b> 01/04/2006 <b>Priority Code:</b> Immediate <b>Requested Completion Date:</b> 01/11/2006		
<b>Complaint Author:</b> Doris Jacobs			<b>Complaint Type:</b> RMA Required  <b>Complaint Source:</b> RD937		
<b>Customer:</b> T-EAL CORP #8724 <b>Customer ID Number:</b> 8724 <b>Location:</b> ONE BOLAND DR STE101, WEST ORANGE, NJ 07052 US <b>Pickup Address:</b>			<b>Customer Contact:</b> <b>eMail Address:</b> <b>Salesperson ID#:</b> RL  <b>Customer Tracking No.</b>		
<b>Job#:</b> 101957	<b>Manifest#:</b> 609981	<b>Ident:</b> 32082000			
<b>Invoice#:</b> 17014	<b>Invoice Date:</b> 09/13/2005	<b>Billed Pieces:</b> 5105			
<b>Complaint Qty:</b> 905	<b>Price/M:</b> [REDACTED]	<b>Invoiced Amount:</b> [REDACTED]			
<b>PROBLEM DESCRIPTION:</b> Customer deducted for 5105 pieces claiming they did not order, but only returned 4200 - see CC-4110 and CC-4111. Per Lai 1/24/06 - customer will pay. Per Mike Petee 5/4/06 - customer will not pay.					
QUANTITY FLOW		RETURNED DISPOSITION INFORMATION		REBILL INFO	
<b>Ordered:</b>	<b>Pick Up Date:</b>	<b>Job Lots:</b>	0	<b>Inv #</b>	<b>Inv Date</b> <b>Quantity</b>
<b>Planned</b>	<b>RMA:</b>	<b>Baled:</b>	0		
<b>Cut:</b>	<b>Additional Info:</b>	<b>Inventory:</b>	0		
<b>Converted:</b>		<b>Rework:</b>	0		
<b>Shipped:</b>		<b>Reship:</b>	0		
<b>Cust Signed:</b>		<b>Qty Returned:</b>	0	<b>Rebill Amount:</b>	
CHARGEBACK INFO		AUTHORIZED DEDUCTION		RD Problem Code:	
<b>C/B Amount:</b>	\$0.00	<b>Pieces x S/M</b>	[REDACTED] = [REDACTED]	020 QUANTITY (INCLUDING WASTE WEIGHT)	
<b>C/B Date Issued:</b>		<b>Additional Credit</b>	\$0.00	RD Assignment Category:	
<b>C/B Date Paid:</b>		<b>Total Credit</b>	[REDACTED]	16 CUSTOMER SERVICE - NON SALV.	
				Problem Code:	
				CS11 WRONG ITEM BOOKED-CS	
				Non-Salvageable Cost:	
<b>ROOT CAUSE:</b> CUSTOMER EMAILS ALL ORDERS WITH PO#. AT TIME THE CUSTOMER IS DESPERATELY LOOKING FOR BOXES AND I HAVE BEEN PROCESSING ORDER AND ONCE I ADVISED THE CUSTOMER THE DUE DATE, SHE USUALLY FOLLOWUP WITH A PO.					
<b>CORRECTIVE ACTION:</b> WILL NOT PROCESS AN ORDER WITHOUT PO					
<b>Complaint Responsibility:</b>					
<b>Department</b>	<b>Machine</b>	<b>Shift</b>	<b>Responsible</b>		

Customer/Service			
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**Additional Information / Attachments:****Customer Complaint Coordinator Section:**

Routed To: Doris Jacobs	Copy To: Quality Manager: Doris Jacobs
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Reassigned To: Lui Gorman	
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<b>Status of Complaint:</b> Created -- 01/04/2006 by Doris Jacobs Sent to Complaint Coordinator -- 01/04/2006 by Doris Jacobs Acknowledged -- 01/04/2006 by Doris Jacobs Reassigned -- 01/04/2006 by Doris Jacobs Reassigned -- 01/24/2006 by Doris Jacobs Acknowledged -- 02/03/2006 by Mike Petee Reassigned -- 02/03/2006 by Mike Petee Acknowledged -- 02/03/2006 by Mike Petee Reassigned -- 05/04/2006 by Doris Jacobs Update Sent to Complaint Coordinator -- 05/05/2006 by Lui Gorman Mailed for Approval -- on: 05/05/2006 by Doris Jacobs Complaint Approved By Bill Stonebreaker -- Dated: 05/05/2006 Complaint Approved @ Plant Level -- 05/05/2006 Complaint Approved & Closed -- Dated: 05/16/2006
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Document Link Field:
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Complaint Mailed for Approval: Date: 05/05/2006
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**PLANT APPROVAL SECTION**

Name: Doris Jacobs Approved - 05/05/2006 by Doris Jacobs  
 Title: Quality Manager

Name: Bill Stonebreaker Approved - 05/05/2006 by Bill Stonebreaker  
 Title: General Manager